

## **Remarks**

The above Amendments and these Remarks are in reply to the Office Action mailed August 31, 2007.

### **I. Summary of Examiner's Rejections**

Prior to the Office Action mailed August 31, 2007, Claims 1-26 were pending in the Application. In the Office Action, Claims 1-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over De Bonet (U.S. Patent 5,852,823) (hereinafter "De Bonet").

### **II. Summary of Applicant's Amendments**

The present Reply cancels Claims 2-5; amends Claims 1, 7, and 18-22; and adds claims 27-32, all as shown above. Applicant respectfully reserves the right to prosecute any originally presented or canceled claims in a continuing or future application.

### **III. Claim Rejections under 35 U.S.C. §103(a)**

Claims 1-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over De Bonet.

#### **Claim 1**

Claim 1 has been amended by the current Reply to more clearly define the embodiment therein. As amended, Claim 1 defines:

1. (Currently Amended) A method for providing images, the method comprising:
  - receiving at least one search result, the search result comprising an image, wherein the image includes an original rank, the original rank based on the relevance of the image within the search result;
  - converting the image to a modifiable format;
  - determining a usability of the converted image according to visual characteristics of the converted image; and
  - assigning a new rank to the search result in response to the usability of the converted image.

Claim 1, as currently amended, defines a method for providing images to a user. Generally, the method involves receiving at least one search result, the search result including

an image wherein the image is ranked according to its relevance within the search. The image is then converted to a modifiable format. The usability of the converted image is then determined according to the visual characteristics of the converted image. A new rank is assigned to the search result in response to the usability of the converted image.

De Bonet relates to a method for searching for images in a database utilizing a query by example paradigm. In De Bonet, a user supplies a group of so-called query images. Then, the invention, through a mathematical assessment of visual similarity, compares the query images to other images in a database. The result of the method is that the images most similar to the query images in the database are returned. Specifically, images are reduced to a set of features for indexing and re-retrieval. The features are computed from local neighborhoods in the images and are represented by a sequence of numeric values, i.e. vectors. The reduced feature vectors provide the user with a mathematical means to assess similarities between images.

Applicant's invention embodied in Claim 1 is not obvious in light of De Bonet, among other things, for the following reasons. The method described in De Bonet describes one possible method of obtaining an image from a search result as set forth in the first step of Applicant's Claim 1 set forth above. In other words, Applicant's invention embodied in Claim 1 begins by obtaining a search result from any known method. De Bonet describes one of those known methods. Nevertheless, Applicant's invention embodied in Claim 1 goes beyond simply obtaining search results. Applicant's invention embodied in Claim 1 converts the images obtained from the search result to a modifiable format. It then determines a usability of the converted image according to visual characteristics of the converted image. Finally, a new rank is assigned to the image based on the usability of the converted image. De Bonet does not disclose any method to convert images into any other formats, it does not assess the usability of an image once it is converted, and it does not provide a basis to re-rank the images which were previously identified as being relevant within the search. These additional elements found in the invention embodied in Claim 1 do not have support in De Bonet, and would not have been obvious in light of the disclosure in De Bonet.

In view of the comments provided above, Applicant respectfully submits that the embodiment defined by Claim 1 is not obvious in view of the cited reference, and

reconsideration thereof is respectfully requested.

#### **Claim 7**

Claim 7 provides that “the usability comprises an ease of modification for the converted image.” The Examiner cited to De Bonet, Col. 19:7-19:13 to reject this dependent claim. However, that section of De Bonet does not appear to discuss modifying images, much less determining the ease with which an image can be modified. Given the fact that De Bonet is focused on indexing and retrieving of images, as opposed to editing images, it is unlikely that De Bonet will disclose Applicant’s invention embodied in Claim 7. Accordingly, Applicant respectfully submits that Claim 7 is not anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

#### **Claim 9**

Claim 9, similar to Claim 1, claims the following: “determining a usability of the image according to visual characteristics of the image.” The Examiner cited to De Bonet, Col 6:5-6:11 to reject this portion of the independent claim. However, that section of De Bonet does not appear to discuss determining a usability of the image according to visual characteristics of the image.” Instead, it appears to simply describe the fact that a mathematical assessment is used to determine image similarities. Whether those images will be usable after they are located is of no concern to the De Bonet process. Again, De Bonet is focused on indexing and retrieving images, not on actually editing or using the images once they are located. Accordingly, De Bonet fails to disclose (and would have no reason to disclose) assessing the usability of an image as set forth in the claim rejection.

Additionally, claim 9 also sets forth the following: “assigning a new rank to the search result in response to the usability of the image.” The Examiner indicated that while “Bonet reference does not expressly call for assigning a new rank to the search result, it would have been obvious if not inherent, that Bonet does in fact ‘test image similarity in rank order,’ that is, test image compared against the average and variance vectors and the similarity measures are then rank ordered (refer to col. 6, lines 33-56). Thus, an ordinary artisan would have recognized the term ‘measuring test image similarity in rank order process’ as used in Bonet reference

broadly meets the claim invention.” Applicant respectfully disagrees with the above statement.

In De Bonet, a query image is used to find other similar images in a database. The images in the database may be ranked according to their similarity to the query image, but a new rank is not assigned in response to the usability of the image. Since the usability of an image is irrelevant in De Bonet, an ordinary artisan would not have thought to assign a new rank based on usability.

Overall, rejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See KRS International Co. v. Teleflex, Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)); see also Examination Guidelines for Determining Obviousness Under 35 U.S.C. § 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc. It is respectfully submitted that no articulated reasoning has been provided to render Claim 9 obvious, especially with respect to “determining a usability of the image” and “assigning a new rank” in response to the usability of the image. Accordingly, Applicant respectfully submits that Claim 9 is not anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

#### **Claim 11**

Claim 11 sets forth “The computer program product of claim 9, wherein the instructions for determining a usability comprise instructions for determining a number of segments for the image.” In Claim 3, which was similar to Claim 11, Examiner rejected the claim by citing to De Bonet, Col. 19:12-18. The cited section does not appear to discuss determining a number of segments for an image at all and it is unclear how this section is being used to support the rejection. Accordingly, it is respectfully submitted that no articulated reasoning has been provided to render Claim 11 obvious. Applicant respectfully submits that Claim 11 is not obvious in view of the cited reference, and reconsideration thereof is respectfully requested.

#### **Claim 12**

Claim 12 sets forth “The computer program product of claim 9, wherein the instructions

for determining a usability comprise instructions for determining a number of colors for the images.” In Claim 4, which was similar to Claim 12, Examiner rejected the claim by citing to De Bonet, Col. 22:7-22:16. The cited section, however, does not appear to discuss “determining a number of colors for the image” and it is unclear how this section is being used to support the rejection. This section simply compares the query images (Fig. 10A) and the search results obtained (Fig. 10B) when utilizing the De Bonet image retrieval process. Accordingly, it is respectfully submitted that no articulated reasoning has been provided to render Claim 12 obvious. Applicant respectfully submits that Claim 12 is not obvious in view of the cited reference, and reconsideration thereof is respectfully requested.

#### **Claims 14, 22 and 23**

Rejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See KRS International Co. v. Teleflex, Inc., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Claims 14, 22 and 23 were rejected as being similarly analyzed as claims 1-8. However, these claims do not have any similar counterparts in Claims 1-8. Accordingly, no reason has been articulated to support the legal conclusion for these rejections. Accordingly, Applicant respectfully submits that Claims 14, 22 and 23 are not obvious in view of the cited references, and reconsideration thereof is respectfully requested.

#### **Claim 17**

Independent Claim 17 is similar to Claim 9. Accordingly, the comments provided for Claim 9 are incorporated by reference herein. Again, similar to Claim 9, De Bonet does not disclose “determining a usability of the image” and “assigning a new rank” *in response to the usability of the image*. Accordingly, Applicant respectfully submits that Claim 17 is not anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

**Claims 6, 8, 10, 13, 15, 16, 18-21, and 24-26**

Claims 6, 8, 10, 13, 15, 16, 18-21, and 24-26 are not addressed separately but it is respectfully submitted that these claims are allowable as depending from an allowable independent claim and further in view of the amendments and/or the comments provided above. Applicant respectfully submits that these Claims are similarly neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested. It is also submitted that these claims also add their own limitations which render them patentable in their own right. Applicant respectfully reserves the right to argue these limitations should it become necessary in the future.

**IV. Conclusion**

In view of the above amendments and remarks, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and reconsideration thereof is respectfully requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this reply, including any fee for extension of time, which may be required.

Respectfully submitted,

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